UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE SOTERA HEALTH COMPANY SECURITIES LITIGATION	Case No. 1:23-cv-00143-CEF Judge Charles Esque Fleming **LEAD PLAINTIFFS' RESPONSE TO DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Lead Plaintiffs Oakland County Employees' Retirement System, Oakland County Voluntary Employees' Beneficiary Association, and Wayne County Employees' Retirement System respectfully submit this response to Defendants' Notice of Supplemental Authority (ECF No. 48) (the "Notice"), which attached the United States Supreme Court's decision in *Macquarie Infrastructure Corporation v. Moab Partners, L.P.*, 144 S. Ct. 885 (2024).

In *Macquarie*, the Supreme Court addressed the limited question of the scope of civil liability for "***pure omissions***" of "known trends and uncertainties" that are required to be disclosed in the Management's Discussion and Analysis of Financial Condition and Results of Operation ("MD&A") sections of public companies' annual (Form 10-K) and quarterly (Form 10-Q) filings with Securities and Exchange Commission ("SEC") under Item 303 of Regulation S-K ("Item 303"). 17 C.F.R. § 229.303(b)(2)(ii). The Supreme Court held, in a narrow ruling, that "pure omissions" of trends and uncertainties required to be disclosed under Item 303 "are not actionable under Rule 10b-5(b)," (*Macquarie*, 144 S. Ct. at 889) ***but*** made clear that the omission of information required by Item 303 will support a Rule 10b-5(b) claim "if the omission renders affirmative statements made misleading." *Id*. at 892. Fundamentally, the Supreme Court found that if the company's SEC filings are alleged to contain affirmative "half-truths" that omit information

required to be disclosed under Item 303 such misleading statements are actionable in private civil litigation under Section 10(b) of the Exchange Act. *Id.* at 891. Thus, the Supreme Court's ruling in *Macquarie* does not reach the Item 303 allegations in this case because Lead Plaintiffs allege that Defendants made "affirmative statements" that were misleading for failure to disclose "known trends and uncertainties."

Defendants' Notice selectively quotes Lead Plaintiffs' Consolidated Class Action Complaint (the "Complaint," ECF No. 24), but does not even mention or address that Lead Plaintiffs' allegations under Item 303 are based on affirmative, misleading disclosures in Sotera's SEC Filings. Specifically, the Complaint alleges that the "***MD&A disclosures*** in Sotera's Forms 10-K and 10-Q filed with the SEC during the Class Period were materially false or ***misleading***" because they did not "disclose material uncertainties and trends associated with Defendants' failure to properly control EtO emissions and the true risk of liability related to the EtO related lawsuits filed against the Company[.]" ¶344 (emphasis added). The Complaint enumerates a number of materially misleading ***affirmative*** statements in Sotera's SEC filings on these subjects, including, for example, Defendants' statement that they "consistently meet and outperform regulatory emissions control requirements" (¶220 (quoting the 2020 Form 10-K)); and statements in the MD&A of multiple Sotera SEC filings denying "allegations" related to lawsuits arising from Sterigenics' operations in Willowbrook, Illinois and Atlanta, Georgia (¶¶223, 244). *See also* MTD Ex. 2 at 17, 54 (ECF No. 31-4). In light of these affirmative statements, Defendants' failure to disclose known trends regarding "Defendants' failure to properly control EtO emissions and the true risk of liability" was a misleading half-truth. These allegations are not affected in any way by the Supreme Court's decision in *Macquarie*.

Moreover, the *Macquarie* court explained that its ruling did not impact scheme liability claims under Rules 10b-5(a) and 10b-5(c). 144 S. Ct. at 892 n.2. The Complaint states such a claim by alleging that Defendants engaged in a scheme to "deceive the investing public . . . regarding, among other things, Sotera's commitment to public safety and compliance with regulatory requirements," and that part of the course of conduct in service of that scheme included "[c]oncealing the carcinogenic risks posed by EtO . . . from the public by denying the merits of the EtO litigation and claiming that the Company had been using EtO 'safely' since the 1930s." ¶¶449-51. The MD&A section of the 2020 Form 10-K's failure to disclose known trends regarding "Defendants' failure to properly control EtO omissions and the true risk of liability related to the EtO-related lawsuits filed against the Company" (¶344) fits squarely within the alleged scheme.

Macquarie does not require the dismissal of any portion of Lead Plaintiffs' claims, and in fact ***supports*** liability for cases like this one, where plaintiffs plead "Item 303 violations that create misleading half-truths" and that support a scheme liability claim. 144 S. Ct. at 892 & n.2.

Dated: April 29, 2024

Respectfully submitted

/s/ Scott D. Simpkins

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Certificate Of Service

I hereby certify that on April 29, 2024, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Respectfully submitted,

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